

The parties agreed claimant suffered a compensable scheduled injury to his right lower leg but could not agree on the nature and extent of his disability. The Administrative Law Judge (ALJ) determined that claimant did not meet his burden of proof to establish that he suffered permanent impairment as a result of his accidental injury.

The claimant requests review of the nature and extent of disability. Claimant argues he is entitled to a 5 percent scheduled injury to the lower leg based upon Dr. Pedro A. Murati's rating. Furthermore, claimant argues that respondent's expert, Dr. Mona S. Rane, disregarded the uncontradicted evidence of claimant's continued complaints of pain.

Respondent argues the ALJ's Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

On June 6, 2006, claimant was cleaning his work area with a high pressure hot water hose when lost control of the hose and sprayed himself on the right lower leg. Claimant suffered burns in two areas on the right lateral leg just below the knee. Respondent's nurse applied ice to the wound and then later applied a cream and ACE wrap. Claimant returned to work with plastic wrapped around the lower leg to keep it from getting wet. He was placed on light-duty work for the next three days.

On June 12, 2006, claimant was seen by Dr. Moffat who performed a wound excision and burn debridement on claimant's right leg. Dr. Moffat diagnosed claimant with full-thickness burns of the right lower extremity. On June 14, 2006, Dr. Moffat performed surgery on claimant described as further debridement followed by split-thickness skin grafting on the right lower extremity with a harvest site on the right thigh. The burn site measured five by four inches in the shape of a diamond which required a full thickness debridement. The skin for the graft was taken from claimant's right distal lateral thigh and measured six by seven inches. Claimant was released from care on August 15, 2006.

Claimant testified he continues to have discomfort from both sites on his right leg. Claimant notes that both areas itch and when he scratches a lot it results in blisters. He further noted that at times he experiences numbness and tingling in both areas.

Dr. Pedro A. Murati examined claimant on October 3, 2006, at the request of claimant's attorney. The claimant complained of occasional pain, numbness, tingling and swelling in his right lower leg. Dr. Murati performed a physical examination of claimant and diagnosed claimant with status post hot water burn to the right lower leg. When the doctor performed a pinprick examination he determined claimant had suffered loss of sensation at both the skin graft site and the site where the graft was taken. Based upon the nerve damage and utilizing the *AMA Guides*¹, table 68 for Impairments from Nerve Deficits, the

¹ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

doctor opined claimant had a 5 percent functional impairment to the right lower extremity. Dr. Murati concluded a 5 percent functional impairment was reasonable because claimant had loss of sensation in more than 60 square inches in his lower leg.

On cross-examination, Dr. Murati agreed that Chapter 13 of the *AMA Guides* addresses ratings for scars and skin grafts but that he had been told that scars cannot be rated under Kansas law so he did not consider that chapter in arriving at his rating for the claimant.² And he further agreed that under Chapter 13 of the *AMA Guides* it is noted that scars and skin grafts may or may not result in permanent impairment dependent upon how they affect the activities of daily living. Finally, Dr. Murati agreed that the *AMA Guides* provide that because sensory deficits are subjective they must be carefully evaluated and ideally two examiners should agree on an impairment based upon sensory deficits.

Dr. Mona Rane, a plastic reconstructive surgeon, performed an examination and evaluation of the claimant on January 2, 2007, for a disability rating at the request of respondent's insurance company. The doctor noted claimant complained of occasional discomfort. The doctor testified that utilizing Chapter 3 of the *AMA Guides* the claimant did not suffer any permanent impairment because he did not suffer any peripheral nerve injury. And ratings for peripheral nerve injuries require complete sensory loss. The doctor further considered Chapter 13 of the *AMA Guides*, and likewise determined the claimant had not suffered any permanent impairment due to his work-related burn.

But on cross-examination, Dr. Rane also testified:

Q. Okay. If he testified to us under oath that he experiences pain in the area, that it itches, that he has tingling sometimes in the area, that it's numb in the area, would that constitute -- if you take that as true, would that constitute an impairment in your opinion?

A. Yes, it could. Yes, it will.³

Functional impairment is the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the *AMA Guides to the Evaluation of Permanent Impairment*, if the impairment is contained therein.⁴ The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.⁵

² The Board knows of no authority for this assertion.

³ Rane Depo. at 16.

⁴ K.S.A. 44-510e(a).

⁵ *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony with the testimony of the claimant and others in making a determination on the issue of disability. The trial court must make the ultimate decision as to the nature and extent of injury and is not bound by the medical evidence presented.⁶

Dr. Murati based his rating upon his determination the claimant suffered a complete superficial sensory loss at both the graft and donor sites. Conversely, Dr. Rane concluded claimant did not have any peripheral nerve injury. But as previously noted, Dr. Rane also testified that if claimant had occasional pain, numbness and tingling, such symptoms would qualify for an impairment. Unfortunately, Dr. Rane did not give a percentage for that impairment. And claimant testified that he continued to have occasional pain, numbness and tingling at both the graft and donor sites.

After considering both doctors' opinions as well as the claimant's testimony, the Board finds that an average of the ratings provided by both these doctors is a reasonable approach. Thus, the Award is modified to reflect a 2.5 percent permanent partial impairment to the right lower extremity. As claimant complained of ongoing symptoms at both the donor and graft sites, the scheduled disability will be calculated based upon impairment to the leg as it is the situs of the resulting disability, not the situs of the trauma, which determines the workers' compensation benefits available.⁷

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Pamela J. Fuller dated June 22, 2007, is modified to reflect claimant suffered a 2.5 percent scheduled disability to the right leg.

The compensable weeks are computed as follows: 200 weeks on the schedule minus 0 weeks of temporary total disability equals 200 times 2.5 percent of disability equals 5 compensable weeks.

The claimant is entitled to 5 weeks of permanent partial disability compensation, at the rate of \$355.47 per week, in the amount of \$1,777.35 for a 2.5 percent loss of use of the right leg, making a total award of \$1,777.35 which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

⁶ *Graff v. Trans World Airlines*, 267 Kan. 854, 983 P.2d 258 (1999).

⁷ *Bryant v. Excel Corporation*, 239 Kan. 688, 722 P.2d 579 (1986); *Fogle v. Sedgwick County*, 235 Kan. 386, 680 P.2d 287 (1984).

Dated this _____ day of October 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
Shirla R. McQueen, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge